IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1131 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE Z.K.SAIYED

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
MAHENDRAKUMAR K MODY & 3 - Opponent(s)

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Appearance :
MR IM PANDYA, APP, for Appellant(s) : 1,
MRS QUEROBINA YAGNIK for Opponent(s) : 1,
None for Opponent(s) : 2 - 3.
MR KR RAVAL for Opponent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 11/12/2007

ORAL JUDGMENT

1. The present Appeal has been filed by the State, under Section 378 Cr. P.C., against the Judgment

and order dated 31.8.1991, rendered in Criminal Case No.466 of 1986 by learned Judicial Magistrate, First Class, Dehgam. This Appeal arising out of the order of discharging the accused before framing of the charge passed by the learned JMFC, allowing the Application Exh.60 in Criminal Case No.466 of 1986, filed by the present respondent No.1 – accused Mahendrakumar Khodidas Modi, for discharge on the ground that as per Notification dated 6.9.1985 Shri I.M.Desai was only Public Analyst and automatically the name of Shri P.M. Patel was cancelled and, therefore, he has no authority to sign on the Report, and under Section 13 the said report cannot be treated as an evidence.

2. In this matter, originally the criminal complaint was filed by Food Inspector Shri Manilal H. Patel in the Court of learned Judicial Magistrate, First Class, Dehgam, inter-alia stating that on 4.7.1985 at about 16.15 o'clock, he (the complainant), along with Panch witnesses Amrutlal Shah and Haji Gani Suleman, went to the shop of respondent (accused) Mahendrakumar Khodidas and took sample of Black Pepper (“Kala Mari”) and sent the same to Public Analyst at Rajkot for analysis. In the Report of Public Analyst it was found that the Black Pepper was adulterated and thereby the respondent (accused) has committed offence under

Sections 7 and 16(1)(A)(1) of the Prevention of Food Adulteration Act (for short “PFA Act”). Thereafter, Food Inspector obtained sanction from the Local Authority at Ahmedabad. Before the charge-sheet, at the time of cross examination of the complainant, the respondent filed an Application Ex.60 for discharging him on the ground that as per Notification dated 6.9.1985 Shri I.M.Desai was only Public Analyst and automatically the name of Shri P.M. Patel was cancelled and, therefore, he has no authority to sign on the Report, and under Section 13 of the PFA Act, the said report cannot be treated as an evidence. He has also relied upon the decisions of the Hon'ble Apex Court reported in **AIR 1986 SC 2160** and also of this Court reported in **1991 GLR 82.**

3. It is contended by learned APP Mr. Pandya that the Judgment and order passed by the trial Court is contrary to law and evidence on record; the trial Court has not given cogent and convincing reason for discharging the accused; the order of the trial Court is against the provision of law and learned Magistrate has erred in discharging the accused before framing the charge. There was prima facie case in Public Analyst's Report as Black Pepper, purchased by the Food Inspector, was found adulterated; Mr. P.M. Patel was authorized to give Report in the capacity as Public Analyst. However, these facts have not

been considered by the trial Court. The trial Court has wrongly held that the sanction of Local Health Authority is illegal. Mr. Pandya has also contended that from the evidence of Food Inspector it is established that the sanction accorded by the Food Inspector is legal and as per the rules. Learned APP Mr. Pandya has fairly argued that when the prima facie case is made out against the accused then the accused cannot be discharged.

4. Learned Advocate Mr. K.R.Raval, appearing on behalf of the respondent – original accused, submitted that from 6.7.1985 Shri P.M.Patel was appointed as Public Analyst in Food Laboratory at Rajkot and as per Notification of the State Government after 6.9.1985 all the appointments of Public Analysts was cancelled and only appointment of Shri I.M.Desai was held to be legal. It was mentioned in the notification that “In supersession of all the previous notifications issued in this behalf in so far as they relate to all the State Public Health Laboratories including all Food and Drugs Laboratories in the State of Gujarat.” The Government of Gujarat appointed Shri I.M. Desai, Junior Scientific Officer in Food and Drugs Laboratory, to be the Public Analyst for all the Local Area of State of Gujarat. It was, therefore, submitted by Mr. Raval that in connection with the said notification the

prosecution has not obtained report from the notified expert and the evidence of the Expert which is produced in the said criminal case is not admissible and not acceptable. He has also submitted that the sample of Black Pepper (Kala Mari) was obtained from the shop of present respondent and it was not sealed as per required under the rules prescribed by law. Mr. Raval has also relied upon a decision of this Court (Coram : C.K.Buch, J.) in Criminal Appeal No.104 of 1991, decided by this Court on 23.3.1998. The said decision is straight-way applicable to the facts of this case. It also appears that Rule : 14 of the Prevention of Food Adulteration Act is not followed by the Agency and the sample which was taken is a breach of Rule : 14 of the Act and a complaint which is based on the public Analysis Report, who was not empowered to issue such type of Certificate (Report) is not maintainable. When the said iota of evidence which is produced before the trial Court and when the prosecution is unable to establish its case, then the trial Court can exercise its discretion and pass such order of discharge in favour of the respondent.

5. I have also gone through the order passed by the trial Court. The trial Court has discussed each and every aspect of the matter and also legal submission. The trial Court has also relied upon the decisions of Hon'ble Apex Court as well as

this Court. In my opinion, the trial Court has rightly observed that the prosecution has failed to establish the prima facie case against the present respondent and rightly discharge the accused.

6. In view of above, I see no reason to interfere with the order passed by the trial Court. Accordingly, this Appeal fails and is hereby dismissed.

7. It is settled legal position that in acquittal Appeal, the Appellate Court is not required to re-write the Judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondent – accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned Judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this Appeal requires to be dismissed.

8. In the result, the Appeal is hereby dismissed. The impugned Judgment and order dated 31.8.1991 passed by the learned J.M.F.C., Dehgam in Criminal Case No. 466 of 1986 acquitting the respondent – accused, is hereby confirmed.

(Z.K.SAIYED,J.)

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